

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

ARTHUR R. JOHNSON CO., INC.
Employer⁽¹⁾

and

Case No. 29-RC-11525

LOCAL 947, INTERNATIONAL UNION
OF JOURNEYMEN AND ALLIED TRADES
Petitioner

DECISION AND DIRECTION OF ELECTION

Arthur R. Johnson Co., Inc. (“the Employer”) is engaged in buying, selling and distributing fabrics to garment manufacturers and other non-retail entities. On November 1, 2007, Local 947, International Union of Journeymen and Allied Trades (“Local 947” or “the Petitioner”) filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of two warehouse employees employed at the Employer’s facility in Brooklyn, New York. The petitioned-for employees perform manual labor, including loading and unloading large fabric rolls from delivery trucks, and storing the fabric rolls in the warehouse. The Employer raises two issues in connection with the petition. First, the Employer contends that Local 947 is not a labor organization as defined in Section 2(5) of the Act. Second, the Employer contends that, in order for the bargaining unit to be appropriate, it must include two clerical employees whom it characterizes as “plant clericals” or “warehouse clericals.”

⁽¹⁾ The Employer’s name appears as amended at the hearing. (*See* Board Exhibit 2.)

A hearing was held before Brent Childerhose, a hearing officer of the National Labor Relations Board. The Petitioner's president, Gloria Larrondo, testified regarding the labor organization issue. The Employer's manager, Asher Gleiberman, testified regarding the clerical employees issue.

As discussed in more detail below, I find, in agreement with the Petitioner, that the Petitioner is a labor organization as defined in Section 2(5). However, I also find, in agreement with the Employer, that the disputed clerical employees are indeed plant clericals, and therefore must be included in the warehouse bargaining unit.

Labor organization status of Petitioner

Section 2(5) of the Act defines a labor organization as:

any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The Petitioner's president, Gloria Larrondo, testified that the Petitioner exists for the purpose of representing employees in dealing with their employers. Specifically, she stated that the Petitioner negotiates contracts with various employers (e.g., a Hilton hotel, and Holiday Inn hotel, and others) to improve employees' wages, benefits and other working conditions, and to represent employees in connection with grievances. Larrondo further testified that employees participate in the organization, for example, by attending meetings.

In short, Larrondo's testimony establishes that the Petitioner exists for the purpose of dealing with employers concerning grievances and other terms and conditions of employment, and that employees participate in the Petitioner's organization. Thus, the Petitioner clearly meets the broad definition of labor organization in Section 2(5) of the Act. *See also* Alto Plastics Mfg. Corp., 136 NLRB 850 (1962).

At the hearing, the Employer contended that Local 947 is not a labor organization because the U.S. Department of Labor (“DOL”) allegedly found some violations during an audit. The Employer’s attorney attempted to ask Larrondo about the audit and about the Petitioner’s finances generally (e.g., salary of its staff member, expenses, amount of initiation fees), but the Hearing Officer ruled that such questions were irrelevant to Local 947’s status as a labor organization as defined in Section 2(5). The Hearing Officer allowed the Employer to make an offer of proof, but ultimately rejected the offer of proof and disallowed any further questioning on this issue. The Hearing Officer correctly ruled that such questions were irrelevant, and I hereby affirm his rulings. I likewise reject the Employer’s attempt to submit further evidence after the hearing by attaching an alleged DOL document to its brief. Contrary to the Employer’s contentions, any alleged DOL findings of violations have no bearing whatsoever on whether the Petitioner meets the statutory definition of a labor organization. Even if the facts alleged by the Employer are assumed to be true, it would not change the fact that the Petitioner exists for the purpose of dealing with employers and therefore meets Section 2(5)’s broad definition.

Finally, in its post-hearing brief, the Employer contended that the Petitioner “offered little meaningful evidence” (despite Larrondo’s testimony described above) and failed to meet its burden to prove its status as a labor organization. As noted above, I have concluded otherwise, and I hereby dismiss the claim summarily.

Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

Plant clerical issue

Facts

Employer-witness Asher Gleiberman manages both the warehouse and office at the Employer's Brooklyn facility. (The Employer also has a warehouse in South Carolina, which is not involved in this proceeding.) The following description of the Employer's warehouse operation is based on Gleiberman's uncontested testimony.

Gleiberman estimated the office to measure approximately 600 square feet, and the warehouse to measure 10,000 square feet. There is one doorway directly between the office and warehouse, and another set of doorways leading to a mutual kitchen area between the office and warehouse. Large rolls of fabric are delivered to, and sent from, the warehouse by trucks, United Parcel Service (UPS), Federal Express (FedEx) and by various other means. For orders begin shipped out by UPS, the warehouse contains a machine which weighs the items and prints out UPS labels for them.

As noted above, the Petitioner seeks to represent a unit limited to the two warehouse employees (Jose Calderon and Andre Costello) who physically handle the fabric rolls. Gleiberman stated that they do not have official job titles. Their specific duties include loading and unloading the rolls from delivery trucks; unrolling them when fabric needs to be cut for taking a sample or for purchase; "pulling" the customers' orders; packaging the orders for shipment; rolling the rolls back up; storing them in the warehouse; and dealing with warehouse-related paperwork. They work Mondays through Thursdays, from 8:00 a.m. to 4:30 p.m., and Fridays from 8:00 a.m. to 2:30 p.m.

Gleiberman testified that Calderon and Costello are paid \$490 per week, on a "salary" basis. He explained that they get the same salary, whether they work 40 hours in a week, or less. However, Gleiberman further explained that they earn overtime pay (presumably based

on an hourly rate) if they work more than 40 hours in a week. They receive a paycheck every other week.

The two clerical employees in dispute, Anna Agronovitch and Tobey Engelson, work primarily in the office area. In total, there are 15 to 17 people working in the office, including Agronovitch and Engelson; another clerical employee, Maria Roman, who deals with the South Carolina warehouse; Gleiberman himself; managers Ernest Iskowitz and Sam Low; one bookkeeper; one information technology (“IT”) person; and several sales employees.

Gleiberman testified that Agronovitch and Engelson have similar duties to each other, except that Agronovitch works mostly with solid-color fabrics while Engelson works with printed fabrics. Their specific duties include preparing the bills of lading and other documents for delivery trucks, UPS, FedEx, etc.; maintaining the computerized warehouse inventory records; taking orders from customers; and making sure that shipments come and go as scheduled. They do not perform the same manual labor as the petitioned-for warehouse employees.

There is no dispute that Agronovitch and Engelson work primarily in the office area, adjacent to the warehouse. However, Gleiberman testified that they work in the warehouse as well, and interact with the petitioned-for employees there. By contrast, the sales employees generally do not enter the warehouse.

As specific examples, Gleiberman testified that Engelson goes into the warehouse to check which fabrics are in stock; tells Calderon and Costello where to store newly-received fabrics in the warehouse (so she can find the fabrics when she needs them later); tells them which orders to pick and what to package for shipping. Although Calderon and Costello usually make the labels for UPS shipping, Engelson also makes UPS labels on occasion, and

she generally maintains the label machine. Approximately once or twice per week, Engelson and Agronovitch also prepare small packages for shipment (e.g., sending fabric samples to a customer), although they do not physically handle the heavy fabric rolls. Thus, they ask Calderon and Costello to get a certain fabric, unroll it enough to cut the requested sample (which could be a small patch, or several yards), then roll it back up and return it to its storage place in the warehouse.

Gleiberman testified that the two clerical employees are in the warehouse every day. When asked to quantify the amount of time they spend there, he stated that there is a range. Sometimes, they go once or twice per day, and other times they may go 8 to 10 times in a day. A simple instruction or question about an order may take only two minutes. However, when Engelson helps Calderon and Costello to “segregate” an incoming shipment of fabrics (e.g., helping to differentiate between “duck” fabrics, “tooled” fabrics, etc.), she may be in the warehouse with them for more than an hour.

Gleiberman further testified that Calderon and Costello go from the warehouse into the office, to ask questions and to pick up or drop off certain paperwork. For example, they go to the office to ask Agronovitch or Engelson (or Gleiberman) questions about inventory; pick up paperwork for orders that they must “pull”; and return paperwork for orders they have already pulled and shipped. Agronovitch enters the information from these documents into the computerized inventory records, so the Employer knows how much fabric is left. Calderon and Costello also pick up bills of lading from Agronovitch when a new shipment arrives and, after the driver signs the document, returns it to the office. They either give paperwork directly to Agronovitch, or put it in the general “in box” in the office. Gleiberman did not estimate how much time the warehouse employees spend in the office overall.

Gleiberman testified that he supervises all four employees in question (Calderon, Costello, Agronovitch and Engelson), as well as the clerical employee (Roman) who deals with the South Carolina warehouse. He conceded that Agronovitch's job requires some data entry skill, which the other warehouse jobs do not require.

Engelson works the same schedule as the petitioned-for warehouse employees (Monday through Thursday, 8:00 a.m. to 4:30 p.m.), although she leaves an hour earlier on Friday (8:00 a.m. to 1:30 p.m.). Agronovitch's schedule is an hour later: Monday through Thursday, 9:00 a.m. to 5:30 p.m., and Friday 9:00 a.m. to 2:30 p.m.. They all have the same holidays, and get the same one week of vacation per year.

Gleiberman testified that Agronovitch and Engelson, like Calderon and Costello, are paid on a "salary" basis every other week. None of them punches a time clock. Engelson (who has worked there the longest) earns "\$600-something" per week, and Agronovitch (who has worked there the second longest) earns \$575 per week. All four receive a bonus at the end of the year. Gleiberman stated that he could not remember the exact amounts, but the four bonuses were either the same, or within \$100 of each other. He also stated that Agronovitch and Engelson receive health benefits, which Calderon and Costello do not receive. However, he further explained that all employees have the same opportunity to participate in a health insurance plan, which requires the employees to pay a portion of the premium, but that only Agronovitch and Engelson chose to do so.

The parties stipulated that there is no history of collective bargaining in this unit. No employees wear a uniform. Gleiberman testified that Calderon and Costello use the kitchen, which is accessible through doors both in the warehouse and office, but he did not state whether Agronovitch and Engelson use the kitchen as well.

Discussion

In deciding the unit placement of clerical employees, the Board makes an important distinction between “office clerical employees” and “plant clerical employees.” Employees whom the Board has found to be “plant clericals” share a strong community of interest with production and maintenance employees, or warehouse employees, such that it would be inappropriate to exclude them from those units. T.E. Hamilton, sole proprietor, d/b/a Hamilton Halter Co., 270 NLRB 331 (1984)(“Hamilton Halter”); Fleming Foods, Inc., 313 NLRB 948 (1994). By contrast, those found to be office clerical employees generally share little community of interest with production or warehouse employees, and are not included in their bargaining unit, absent agreement of the parties or other unusual factors. Westinghouse Electric Corp., 118 NLRB 1043 (1957); Townley Metal & Hardware Co., 151 NLRB 706, 708-9 (1965).

The challenge, however, is determining whether particular clerical employees are in fact “office” or “plant” clericals. As the Board has acknowledged, “the distinction between office clericals and plant clericals is not always clear.” Hamilton Halter, supra.

Generally speaking, in the context of warehouse bargaining units, those employees found to be plant clericals have duties “integral to the functioning of the warehouse operations,” significant contact with other warehouse employees, and other traditional community-of-interest factors such as common supervision and close physical proximity. S & S Parts Distributors Warehouse, Inc., 277 NLRB 1293, 1296 (1985); John N. Hansen Co., Inc., 293 NLRB 63, 64-5 (1989); Fleming Foods, supra, 313 NLRB at 949; Interstate Warehousing of Ohio, LLC, 333 NLRB 682, 688-9 (2001). Typically, plant clerical employees handle paperwork that is functionally integral to the warehouse operation, such as

inventory records; invoices, “picking tickets” or other documents related to the processing of customers’ orders in the warehouse; and bills of lading and other shipping-related documents. John N. Hansen, *supra*. By contrast, typical office clerical employees’ duties (such as answering the phone, handling payroll and billing) are not closely related to the warehouse operations. S & S Parts, *supra*, 277 NLRB at 1296-7. In addition, warehouse clerical employees generally have face-to-face contact with the warehouse unit employees, such as when they deliver picking tickets, or when they share information regarding the whereabouts of merchandise for inventory purposes.

For example, in John N. Hansen, *supra*, the parties had agreed to hold an election in a unit of warehouse employees, excluding office clerical employees and others. In a post-election challenged-ballot proceeding, a clerical employee named Paulette Downing was alleged to be a plant clerical. Downing worked primarily in the office area, and did not perform such physical warehouse tasks as receiving, packing or shipping the employer’s merchandise. Nevertheless, her desk and workbench were located only five feet from a warehouse door. Her duties included converting customers’ orders into “picking tickets” (indicating which items the warehouse employees had to pick, package and ship); routing all orders and international shipments; giving warehouse employees information necessary to complete the bills of lading; and dealing with returned or defective merchandise. She had frequent contact with warehouse employees when performing these duties. Downing also shared common supervision, fringe benefits and other conditions of employment with the warehouse employees. The Board, finding that her duties were “integral” to the warehouse order-flow process, concluded that Downing was a plant clerical employee, whose vote must be counted as part of the warehouse unit. The Board also noted: “The fact that she works

with forms in the office area, and utilizes a computer, typewriter and other traditional office equipment does not preclude her inclusion in the warehouse unit.” *Id.*, 293 NLRB at 65, citing *S & S Parts, supra*, and *Avon Products*, 250 NLRB 1479, 1486 (1980). Furthermore, the fact that she did not perform the same physical labor as warehouse employees did not mandate a different result.^{2[2]}

The record in the instant case indicates that Anna Agronovitch and Tobey Engelson work closely with the petitioned-for warehouse employees. Their office is directly adjacent to the warehouse, and they often must enter the warehouse in the performance of their duties. Although they do not physically handle the fabric rolls, their core clerical functions – including inventory record-keeping, and preparing invoices and documents for shipping – mirror those exact functions which the Board has deemed functionally “integral” to warehouse work in the cases cited *supra*. In addition, the record indicates that Agronovitch and Engelson have daily face-to-face contact with the warehouse employees. Specific examples of such contact include: going into the warehouse to check on inventory; helping Calderon and Costello to “segregate” different types of fabrics; telling them where to store newly-received fabrics; telling them which orders to pick; asking them to unroll fabrics for cutting a sample; maintaining the UPS machine in the warehouse; and preparing small packages for shipping at least once per week. They also have some face-to-face contact when Calderon and Costello enter the office to ask questions, and to pick up or drop off the relevant paperwork, although the record does not indicate how often this occurs. The record further indicates that Agronovitch and Engelson share the same supervisor as Calderon and Costello. They have similar work schedules, the same vacation leave and the same holidays. Although they earn

^{2[2]} Of course, clerical employees who perform physical labor along with bargaining unit employees are more likely to be deemed plant clericals, e.g., *Hamilton Halter, supra* (occasionally helping to load and unload trucks), but such labor is not required for a finding of plant clerical status.

more money than Calderon and Costello, the difference may be attributable to their longer employment for this Employer. Finally, as noted above, the fact that they use different equipment and skills (e.g., computer for data entry) does not negate their close functional integration into the warehouse operations.

Based on the foregoing, I conclude that Agronovitch and Engelson are plant clerical employees, with a sufficiently strong community of interest with the petitioned-for warehouse employees to mandate their inclusion in the warehouse unit.^{3[3]}

During the hearing, the Hearing Officer asked the Petitioner's representatives whether the Petitioner would be willing to proceed to an election in any unit found appropriate herein. However, their response was not clear from the transcript. Accordingly, I will direct an election below in the appropriate unit. If the Petitioner chooses not to proceed to an election under these circumstances, the Petitioner must notify the Regional Office within one week of the issuance of this Decision.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, including the parties' stipulations and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The record indicates that the Employer, with its office and place of business located at 33 34th Street, Brooklyn, New York, is engaged in buying, selling and distributing

^{3[3]} In its post-hearing brief, the Petitioner raised (for the first time) arguments that Agronovitch and Engelson may be managerial employees or supervisors. The Petitioner cited NLRB v. Yeshiva University, 444 U.S. 672 (1980) regarding managerial status, but did not cite any cases on the plant clerical issue. Furthermore, the Petitioner has not presented any evidence whatsoever to meet its burden of proving that Agronovitch and Engelson are managerial or supervisory. I therefore reject these arguments.

fabrics on a non-retail basis. During the past year, which period represents its annual operations generally, the Employer purchased and received goods valued in excess of \$50,000 directly from suppliers outside the State of New York. The parties stipulated, and I hereby find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner, which I have found to be a labor organization, claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. In accordance with the foregoing discussion, I hereby find that the following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse employees, including warehouse clerical employees, employed by the Employer at its 33 34th Street, Brooklyn, New York facility, but excluding office clerical employees, managers, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Local 947, International Union of Journeymen and Allied Trades. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full

names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **February 20, 2008**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **February 27, 2008**. The request may **not** be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlr.gov.

Dated: February 13, 2008.

"/s/{Alvin Blyer]"
